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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

CORNELIUS PRIOR, JR.,)	
)	
Plaintiff,)	
)	
v.)	
)	
INNOVATIVE COMMUNICATIONS CORP.,)	
f/n/a ATLANTIC TELE-NETWORK CO.,)	
)	Civ. No. 1999-232
Defendant/Third)	
Party Plaintiff,)	
)	
v.)	
)	
CRAIG KNOCK,)	
)	
Third Party)	
Defendant.)	
_____)	

—

)	
ATLANTIC TELE-NETWORK, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 1999-236
)	
JEFFREY J. PROSSER,)	
)	
Defendant.)	
_____)	

—

ATTORNEYS:

J. Daryl Dodson, Esq.
St. Thomas, U.S.V.I.
*For plaintiffs Cornelius Prior, Jr.
and Atlantic Tele-Network, Inc.*

Joel H. Holt, Esq.

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St. Croix, U.S.V.I.
For defendants Innovative Communications Corp. and Jeffrey J. Prosser.

MEMORANDUM AND ORDER

Defendants Innovative Communications Corp. ["ICC"] and Jeffrey J. Prosser ["Mr. Prosser"] have asked me to recuse myself from the above-captioned cases due to my personal relationship with plaintiff Cornelius Prior, Jr. ["Mr. Prior"], and their allegations of judicial bias against Mr. Prosser.

The defendants' motion relies on two statutes--title 4, section 284 of the *Virgin Islands Code*, and title 28, section 455 of the *United States Code*. Before discussing the defendants' allegations, I will review these statutes in brief.

V.I. CODE ANN. tit. 4, § 284 provides that "[n]o judge shall sit or act . . . in any action . . . [w]hen it is made to appear probable that, by reason of bias or prejudice of such judge, a fair and impartial trial cannot be had before him." 4 V.I.C. § 284(4). Similarly, 28 U.S.C. § 455 mandates that a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned," or "where he has a personal bias or prejudice concerning a

party." 28 U.S.C. § 455(a-b); In re *Recusal Motion*, Misc. No. 2000-001, slip. op. at 5 (D.V.I. July 24, 2000).

The statutes differ somewhat in their application. Under 4 V.I.C. § 284, the movant "must allege facts reflecting a *clear probability* that the judge is biased," but the truth of the movant's allegations is presumed. *De Olivera v. Armstrong*, Civ. No. 1977-111, slip. op. (D.V.I. 1977) (emphasis added); see also *Government of the Virgin Islands v. Gereau*, 11 V.I. 265, 295-96, 502 F.2d 914, 931 (3d Cir. 1974). Conversely, under 28 U.S.C. § 455, the movant need only show that the court's "impartiality *might reasonably* be questioned," but the movant's allegations may be examined for their truth. See In re *Recusal Motion*, slip. op. at 6 n.3 (emphasis added).

Mr. Prosser's affidavit opens with the statement that "Cornelius Prior is a personal friend of the Honorable Thomas Moore." (Defs.' Mem., Mar. 22, 2000, Ex. 1.) Mr. Prior and I have played tennis with and against each other on a fairly regular basis for several years. The defendants have not asked me to recuse myself from previous actions involving Mr. Prior, or Mr. Prosser, but their present counsel suggests that

the fact that I know him personally would lead reasonable persons to sincerely question my impartiality as judge. Out of an abundance of caution, I will grant the defendants' motion for this reason.¹

I depart from my usual practice of not explaining my grounds for recusal, however, because Mr. Prosser's affidavit and the defendants' two-pronged motion contain other allegations that are legally insufficient for judicial disqualification. If the defendants' motion relied solely on the allegations reproduced below, I would deny their motion under 4 V.I.C. § 284 and 28 U.S.C. § 455.

Mr. Prosser's affidavit alleges, in pertinent part:

6. While the appeal [of a writ of execution issued by the Territorial Court for a \$2,500,000 payment required by Mr. Prosser's divorce decree] was pending in 1996, a reporter from the [Virgin Islands] Daily News called an employee of mine, Ed Crouch, on January 11, 1996[,] and asked for information about the case. When Mr. Crouch suggested that the matter was not newsworthy, the reporter informed Mr. Crouch that he had received information from Mr. Prior's attorney about the divorce as well as from the law clerks of Judge Moore, whom he indicated had given him an off-the-record interview regarding the specific details of the case.

¹ To eliminate any delay in the handling of this case, I apprised Magistrate Judge Geoffrey W. Barnard of my impending recusal, and Judge Barnard assigned this case to Senior District Judge Stanley S. Brotman of the District of New Jersey, sitting by designation, on June 8, 2000.

7. *The subsequent article appeared one week later and was negative toward me. I suggested to counsel that a recusal motion should be considered, but counsel chose not to pursue it.*

8. *One month later, the same law clerks filed claims with the PSC in their own names against Vitelco. I again suggested to counsel that a recusal motion should be considered, as these were the law clerks working on the appeal. However, counsel again chose not to pursue the issue.*

9. *After this Court's denial of my appeal, the divorce case was settled by full payment of all sums owed plus interest, costs and attorney's fees.*

10. *To my surprise, 30 months later, this Court entered sanctions against me personally, even though no hearings were ever held regarding my conduct and/or involvement in the case. When the Third Circuit reversed these sanctions, the sentiments expressed in footnote 4 admonishing courts against "vindictiveness or retribution" expressed my feelings about how I was treated in this matter.*

11. *The same feeling again arose when one of the former law clerks previously mentioned filed a class action suit in the District Court in 1998 against my companies arising out of circumstances that took place when he worked for the District Court when my appeal was being considered.*

12. *I have discussed my concerns about Judge Moore's ability to be impartial toward me with various persons, including practicing attorneys in this jurisdiction, and they have all echoed my concerns, including the fact that Judge Moore has made extrajudicial statements which suggest that he harbors hostile feelings toward me.*

13. *Based upon the foregoing information, I believe that Judge Moore cannot be impartial toward me or my wholly-owned companies*

(Def.' Mem., Mar. 22, 2000, Ex. 1 (Aff. of Jeffrey J. Prosser) (emphasis added).)

Assuming that these allegations are true under 4 V.I.C. § 284, they do not reflect a clear probability that I am biased or prejudiced against Mr. Prosser or his wholly-owned companies.

First, the allegation that "the law clerks of Judge Moore had given [an unidentified reporter] an off-the-record interview regarding the specific details" of Mr. Prosser's appeal is both vague and irrelevant to the issue of my impartiality. Without describing the "specific details" of the alleged "off-the-record" conversation, Mr. Prosser's affidavit suggests that my law clerks communicated confidential information such as my personal views to the news media.² The affidavit does not attribute this alleged conversation to me, with good reason: My law clerks are responsible for their own actions, and are expressly forbidden to disclose confidential information, such as my personal views on pending matters, to the news media. *Cf.* CODE OF CONDUCT FOR JUDICIAL EMPLOYEES Canon 3D ("A judicial employee should never disclose any confidential information received in the course of official duties").

² (See *id.*) The record and briefs in Mr. Prosser's appeal were available to the public, so the information allegedly disclosed to the *Daily News* presumably would have related to my thoughts on the case.

Likewise, the allegation that a *Daily News* article "appeared one week later and was negative" toward Mr. Prosser, (Defs.' Mem., Mar. 22, 2000, Ex. 1), is not evidence of judicial bias. There is no allegation that I spoke to a *Daily News* reporter off-the-record or authorized another person to do so, and I have no control over the content or tone of the *Daily News*, or any other news publication. "In any event, news media outlets are not an effective barometer for determining whether recusal is warranted, as other courts have acknowledged." In re *Recusal Motion*, slip. op. at 48 (citations omitted).

Mr. Prosser's allegations that one or more of my law clerks "filed claims with the PSC in their own names against Vitelco" or "filed a class action suit in the District Court in 1998 against [his] companies," (Defs.' Mem., Mar. 22, 2000, Ex. 1), are also irrelevant to my impartiality. Again, my law clerks are responsible for their own actions, and there is no allegation in the affidavit that I instigated these actions. The defendants may believe that my law clerks were biased against Mr. Prosser and dictated my views, but no facts in the affidavit--or beyond--justify this false impression. Indeed, when the District Court case involving my former law clerk

came to my attention, I recused myself *sua sponte*, that is, on my own initiative. (See Order, Civ. No. 1998-022, Oct. 29, 1998.)

Mr. Prosser next alleges that the Appellate Division of the District Court erred in denying his appeal and imposing sanctions upon him without a hearing. (Defs.' Mem., Mar. 22, 2000, Ex. 1.) For purposes of 4 V.I.C. § 284, I also accept this allegation as true, but conclude that it falls far short of establishing a clear probability that I am personally biased or prejudiced against the defendants.

The two *per curiam* Appellate Division decisions in question, *Prosser v. Prosser*, 34 V.I. 139, 921 F. Supp. 1428 (D.V.I. App. Div. 1996), and *Prosser v. Prosser*, 40 V.I. 241, 40 F. Supp.2d 663 (D.V.I. App. Div. 1998), are poor evidence of my supposed antagonism toward Mr. Prosser. These decisions reflected the collaborative effort and shared views of Chief District Judge Raymond L. Finch and Territorial Court Judge Ive A. Swan in addition to myself.

As Mr. Prosser notes, the Court of Appeals reversed our sanctions order on timeliness grounds, and noted in a footnote that "[a] court cannot be motivated by vindictiveness or retribution when issuing sanctions." (See Defs.' Mem., Mar.

22, 2000, Ex. 1); *Prosser v. Prosser*, 186 F.3d 403, 406 n.4 (3d Cir. 1999). The Court of Appeals explicitly refused to express an opinion on the merits of the sanctions order, however, and never described our decision as the product of personal bias. See *id.*

Disqualification requires proof of *personal* bias, not adverse attitudes based on the study of facts, depositions, or briefs. See *Joseph v. Zinke-Smith, Inc.*, 6 V.I. 219, 223 (Mun. Ct. 1967); see also *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966). Adverse or erroneous judicial decisions are not grounds for recusal. See *In re Recusal Motion*, slip. op. at 22 (citing *Jones v. Pittsburgh Nat. Corp.*, 899 F.2d 1350, 1357 (3d Cir. 1990)), 33 (citing *Johnson v. Trueblood*, 629 F.2d 287, 291 (3d Cir. 1980)); *Stephen v. Antigua Brewery, Ltd.*, 41 V.I. ---, 88 F. Supp.2d 422, 425 (D.V.I. 2000). The *Prosser* record hardly mandates my disqualification.

Lastly, Mr. Prosser alleges that "various persons . . . have all echoed [his] concerns, including the fact that Judge Moore has made extrajudicial statements which suggest that he harbors hostile feelings toward [him]." (Defs.' Mem., Mar. 22, 2000, Ex. 1.) This conclusory allegation is not competent

evidence of judicial bias. See *In re Recusal Motion*, slip. op. at 56-57; *Kampfer v. Gokey*, 955 F. Supp. 167, 169 (N.D.N.Y. 1997) (observing that "conclusory claims of bias without adequate supporting factual allegations" do not compel recusal); *Hirschkop v. Virginia State Bar Ass'n*, 406 F. Supp. 721, 725 (E.D. Va. 1975) (rejecting generalized affidavit). If such vague claims were legally sufficient for recusal, litigants could disqualify judges at will. See *In re Recusal Motion*, slip. op. at 38; *United States v. Corr*, 434 F. Supp. 408, 413 (S.D.N.Y. 1977). Likewise, Mr. Prosser's subjective belief that I "cannot be impartial toward [him] or [his] wholly-owned companies" provides no basis for recusal.

As I have explained, Mr. Prosser's allegations are legally insufficient for judicial disqualification under 4 V.I.C. § 284. The same conclusion is appropriate under 28 U.S.C. § 455, for his affidavit contains no allegations that would lead reasonable, informed observers to question my impartiality.

The affidavit relies heavily on conjecture and multiple hearsay. It attempts to establish that my law clerks revealed confidential information to the *Daily News* by recounting a

phone call between an unidentified reporter and one of Mr. Prosser's employees, Mr. Ed Crouch, in which the reporter tried to gain information from Mr. Crouch and establish that Mr. Prosser's appeal was newsworthy by asserting that he had spoken to my law clerks. (Defs.' Mem., Mar. 22, 2000, Ex. 1.) The obviously self-serving remarks of an unidentified reporter, related by a person who did not even overhear those remarks, is unworthy of credence. The hearsay allegation that I made "extrajudicial statements which suggest that [I] harbor[] hostile feelings" toward Mr. Prosser, (*id.*), is equally implausible.

I categorically reject the allegations of judicial bias in Mr. Prosser's affidavit as grounds for my disqualification. As it has been suggested that my acquaintance with Mr. Prior would lead reasonable persons to question my impartiality, however, it is hereby

ORDERED that the defendants' motion for recusal is
GRANTED.

ENTERED this 16th day of August, 2000.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
ORINN ARNOLD
Clerk of the Court

By: ____/s/_____
—
Deputy Clerk

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